CALIFORNIA COASTAL COMMISSION
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Tue 22a

Staff: GDC-SD
Staff Report: 1/27/00
Hearing Date: 2/15-18/00

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-99-115

APPLICANT: Jack Lampl Agent: Matt Peterson

PROJECT DESCRIPTION: After-the-fact approval for construction of mid and upper bluff retaining walls, and private stairway on the bluff face; repairs and improvements to the retaining walls; and construction of 338 sq. ft. addition to existing 4,426 sq. ft. duplex.

PROJECT LOCATION: 676-678 Neptune Avenue, Encinitas, San Diego County. APN 256-051-07

STAFF NOTES:

At its October 14, 1999 hearing, the Commission found "substantial issue" exists with respect to the grounds on which the subject appeal was filed. The permit application is now before the Commission for de novo review. Several components of the proposed development, the mid and upper bluff walls and the staircase have already been constructed without a permit. The issue before the Commission is whether these structures are consistent with the certified Local Coastal Program. Therefore, the staff report evaluates the consistency of these structures as if they had not yet been constructed. This ensures that the applicant does not benefit from an apparent violation of the Coastal Act by using the presence of the unpermitted structures as justification for the finding of consistency with the LCP. If the Commission finds that the structures are not consistent with the LCP, the Commission will then be asked to address the applicant's request to retain these structures despite their inconsistency with the LCP, on grounds that they cannot be removed without threatening the existing residence. This request would be addressed as part of the enforcement response to the apparent violation of the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission deny the proposed mid and upper bluff retaining walls, repairs to the walls, addition to the residence, and private access stairway

on the bluff face on grounds that they are inconsistent with the City's LCP related to provisions for a thorough alternatives analysis to the proposed development, the prohibition of private stairways on the bluff face, the preservation of the bluff and the construction of new development in hazardous areas. Because the mid and upper bluff retaining walls and stairway have already been constructed, it is difficult to determine the exact nature of the hazard to the existing structure on top of the bluff and to evaluate the structural and non-structural alternatives to the constructed development. There is some evidence that shoreline protection in the form of bluff face retentive structures is necessary to protect the existing residence. However, there is insufficient information to determine the adequacy of the proposed design of the mid and upper bluff walls, and whether there are feasible alternative measures to the design that would protect the existing structures with fewer adverse impacts to coastal resources. There is also some evidence that less environmentally damaging alternatives are available. Therefore, staff recommends that the Commission deny a permit for the proposed mid and upper bluff face walls. In addition, because the applicant has provided documentation that identifies that without repairs to the existing mid and upper bluff retaining walls, the existing residential structures on the blufftop are in danger, staff recommends that the proposed residential addition also be denied. Because the mid and upper bluff protection is inconsistent with the LCP, staff is also recommending that the proposed repairs be denied. The disposition of these structures (mid/upper bluff walls and stairway) will be the subject of a separate enforcement action.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); "Proposed Sea Wall 678 Neptune Ave." by Converse Consultants, April 19, 1985; "Geologic Reconnaissance" by Michael W. Hart, February 6, 1995; Appeal Applications dated August 23, 1999; Limited Geotechnical Assessment Update by Soil Engineering Construction, December 14, 1998; " Letter from Soil Engineering Construction to Coastal Commission dated August 5, 1999; City of Encinitas Planning Commission Resolution No. PC-99-34; MUP/CDPDR 95-106; Letter from Skelly Engineering to Matt Peterson dated November 1, 1999; CDP Nos. 6-92-167-G/Mallen, et al., 6-99-8/Lampl and A-6-ENC-99-115/Lampl.

I. **MOTION:** ***I move that the Commission approve Coastal Development Permit No. A-6-ENC-99-115 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the Certified Encinitas Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.:

1. Project Description/History. The proposed development involves the construction of mid and upper bluff retaining walls, construction of a private stairway on the face of the bluff leading to the beach, repair and improvements to the mid and upper bluff walls, and an approximately 338 sq. ft. addition to the existing approximately 4,426 sq. ft. duplex. The mid and upper bluff retaining walls and the stairway have already been constructed without a coastal development permit in apparent violation of the Coastal Act.

The proposed development is located on the face of and above an approximately 95 ft. high coastal bluff on the west side of Neptune Avenue in Encinitas fronting a single lot containing a 4,426 sq. ft. duplex. The duplex is sited approximately 17 feet from the bluff which was reconstructed when the upper bluff walls were installed. Thus, the bluff edge and upper bluff wall are coterminous. According to the applicant, the existing duplex was constructed in 1972, prior to the enactment of the Coastal Act and included a private access stairway to the beach and a tram. Based on review of plans submitted by the applicant, it appears the duplex was constructed with a foundation that includes caissons that have been installed up to 35 feet deep into the bluff. The pre-existing Coastal Act stairway and tram were subsequently removed or destroyed as a result of bluff failures. The current stairway was constructed in approximately 1995 in a different location than the previous stairway and tram. The current stairway is attached to the northern upper bluff retaining wall and traverses down the face of the bluff to the top of an unpermitted seawall below. A metal stairway extension has been placed on the face of the lower seawall leading to the beach below with concrete steps extending onto the beach.

The approximately 37 foot-high, 67 foot-long seawall located on the beach at the base of the bluff was also constructed without a coastal development permit. At its August 1999 hearing, the Commission denied an after-the-fact permit for retention and repairs to the lower seawall finding that the seawall is inconsistent with Chapter 3 policies of the Coastal Act (ref. CDP No. 6-99-8/Lampl). The Commission found that although a lower seawall was necessary to protect the blufftop duplex, the proposed seawall was not the least environmentally damaging design. On January 12, 2000, the Commission also denied the applicant's request for reconsideration of its earlier denial.

The proposed approximately 35 foot-high, 50 foot-long (total) upper bluff retaining wall is located on the bluff face of the upper bluff and consists of two sections. The northern section of the wall consists of tied back concrete columns with horizontal wood lagging. The southern section of the wall consists of tied back wood/timber columns, one horizontal wood/timber waler with tie backs and horizontal wood lagging. The applicant's engineer asserts that the southern upper wall was probably constructed in 1989 and the northern upper wall in 1995 following an upper bluff failure. The applicant has identified these upper walls to be in a state of failure that threatens the duplex and has requested repairs and improvements to the walls. The proposed repairs consist of installation of a new row of approximately 40 foot-long tie backs near the bottom of walls and a reinforced concrete waler. Corrosion protected steel channel splints are also proposed to be installed onto the existing wood/timber columns.

The proposed mid-bluff wall consists of an existing approximately 10 foot-high, 18 foot-long retaining wall located on the southern half of the bluff face consisting of vertical and horizontal wood timbers with wooden bracing. The mid bluff wall was constructed at an unknown time between 1972 and 1985. The applicant also proposes to repair the mid-bluff wall by re-bracing the wall and replacing some vertical wood or timber supports, and reducing the height of the backfill by about 1 foot to reduce the load on the wall.

Finally, the applicant proposes to construct an approximately 338 sq. ft. addition to the existing approximately 4,426 sq. ft. duplex. The development consists of a 130 sq. ft. first floor and a 208 sq. ft. second floor addition located directly above the first floor addition. The entire addition will be placed back approximately 41 feet from the edge of the bluff and the applicant asserts that it has been designed so as not to preclude its removal if threatened in the future by shoreline or bluff erosion.

The City approved a permit for the mid and upper walls, repair work for the walls and the addition to the duplex. With respect to the stairway, which was included in the applicant's permit application, the City required the applicant to record a covenant in which the City agreed not to order removal of the stairway and the applicant agreed not to remove and replace the stairway (see attached Exhibit #5). The covenant allows the applicant to perform routine repair and maintenance of the stairway. The City required the recorded covenant in response to the applicant's application for a permit for the stairway. Since the covenant allows the stairway to remain, it is in effect a permit for the stairway and therefore, is part of the permit that was been appealed to the Commission.

The City of Encinitas has a certified Local Coastal Program (LCP) and has been issuing coastal development permits since May of 1995. The proposed development, which is located on the bluff face landward of the MHTL, is located within the permit jurisdiction of the City's LCP and, therefore, the standard of review for the subject development is the Certified Encinitas LCP and the public access and recreational policies of the Coastal Act.

2. Geologic Conditions and Hazards.

Resource Management (RM) Policy 8.5 of the LUP states, in part, that:

> The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible. . . .

Public Safety Policy 1.7 of the City of Encinitas's certified LUP states, in part, that:

> The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. . . .In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City will not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principal structure is imminently threatened and, based on a thorough alternatives analysis, an emergency coastal development permit is issued, and all emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply. (emphasis added)

Section 30.34.020(B)(2)(9) of the certified Implementation Plan (IP) includes similar language:

> . . . In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City shall not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principle structure is imminently threatened and, based on a thorough alternative analysis, an emergency permit is issued and emergency measures authorized by the emergency coastal development permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply. (emphasis added)

In addition, Section 30.34.020(C)(2)(b) states the following:

> When a preemptive measure is proposed, the following findings shall be made if the authorized agency determines to grant approval:
>
> (1) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development.

(2) The proposed measure must be necessary for the protection of a principal structure on the blufftop to which there is a demonstrated threat as substantiated by the site specific geotechnical report.

(3) The proposed measure will not directly or indirectly cause, promote or encourage bluff erosion failure, either on site or for an adjacent property, within the site-specific setting as demonstrated in the soils and geotechnical report. Protection devices at the bluff base shall be designed so that additional bluff erosion will not occur at the ends because of the device.

[. . .]

In addition, Section 30.34.020 (D)(8) of the City's Certified IP requires the submission of a geotechnical report for the project site that includes, among other things:

8. Alternatives to the project design. Project alternatives shall include, but not be limited to, no project, relocation/removal of threatened portions of or the entire home and beach nourishment.

The Certified IP also requires that shoreline protective structures be designed to be protective of natural scenic qualities of the bluffs and not cause a significant alteration of the bluff face. In particular, Section 30.34.020B.8 states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

and Section 30.34.020.C.2.b.(4) states:

The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded areas; and not cause a significant alteration of the natural character of the bluff face.

Because the mid and upper structures have already been constructed, the geologic conditions of the site at the time of initial construction are difficult to evaluate in terms of the need for the walls and what alternatives may have been available at that time or may be available today. The applicant has submitted a number of reports, most of which were prepared in the past, that address the site.

A geotechnical report for a proposed seawall below the subject site was prepared in April of 1985 and documented the existence of four retaining walls on the subject property ("Proposed Sea Wall 678 Neptune Ave." by Converse Consultants, April 19, 1985). The report described two 7 foot-high, 50 foot long walls at the base of the bluff, one 5 foot-high, 15 to 20 wide wall at mid-bluff and an 11-12 foot-high retaining wall located near

the top of the bluff extending across the width of the property. The report determined that even with those existing retaining structures that "the bluff and sea cliff are marginally stable (Factor of safety approaching 1 or less)". Subsequent to that date, the upper 11 to 12 foot-high retaining wall was replaced by the two existing 35 foot-high, 50 foot-long (combined) retaining walls. The applicant's engineer asserts that the southern upper wall was probably constructed in 1989 and the northern upper wall was constructed in 1995 following an upper bluff failure. The applicant has supplied a "Geologic Reconnaissance" for the subject site dated February 6, 1995 which identifies that:

> The upper 70+/- feet of the bluff is partially supported by two tiers of timber retaining walls. The approximate northern half of the two walls failed in January of 1995 resulting in a loss of the superficial soils and ground cover, a portion of the rear yard that was supported by the upper-most wall, and a loss of backfill soil behind the wall located at mid-slope. It is proposed to replace the failed walls with engineered tie-back wall systems. ("Geologic Reconnaissance" by Michael W. Hart, February 6, 1995)

This "Geologic Reconnaissance" is limited in its scope to "commenting on the suitability of the exposed bedrock units as foundation materials for the proposed retaining walls." The report fails to address the overall stability of the site, does not propose alternatives to the project, does "not include an evaluation of the stability of existing retaining walls or the seawall" and does not evaluate a bluff-retreat rate "because bluff erosion on-site and on adjacent properties has been or will be arrested by seawalls and existing or proposed mid-slope retaining walls" (quotes are from the "Geologic Reconnaissance" report). As such, this "Geologic Reconnaissance" from 1995 provides insufficient information for the Commission to evaluate whether the walls are required to protect an existing structure in danger from erosion and whether the walls are the least environmentally damaging design in terms of land form alteration and visual resources. In addition, the applicants have prepared a "Limited Geotechnical Assessment Update" to this 1995 report that addresses the current proposal to retain the existing retaining walls and to perform repairs to them ("Limited Geotechnical Assessment Update by Soil Engineering Construction, December 14, 1998). Although not identifying alternatives, this report documents that the existing retaining walls are in a state of failure "placing the residential structure on the subject lot as well as the neighboring property (660 Neptune Avenue) in imminent threat of failure".

Subsequent letters from the applicant's engineer, although not identifying any alternatives, assert that "removal or structural failure of any of the coastal bluff retaining structures would place the residential structure, at 678 Neptune Avenue, in imminent threat of immediate failure" (Letter from Soil Engineering Construction to Commission dated August 5, 1999). The report "Proposed Sea Wall 678 Neptune Ave." by Converse Consultants, April 19, 1985 stated that the bluff had a margin of safety of less than 1. In addition, 1992 photographs of the immediately adjacent blufftop lot to the south show that the residence on that site was hanging over the edge of the bluff. The Commission approved an emergency permit for upper bluff protection on that site in 1992 (Ref. CDP No. 6-92-167-G/Mallen, White and Bourgault) along with a emergency permit to

construct a seawall structure at the base of the bluff (Ref. CDP No. 6-92-86-G/Mallen, et al.).

In addition, as part of the applicant's recent request for reconsideration of the Commission's denial of the lower seawall (6-99-8-R/Lampl), the applicant on January 10, 2000 submitted a new geological assessment of the site (Letter from Skelly Engineering dated November 1, 1999 to applicant's attorney, Matt Peterson) which emphasizes the hazardous condition of the bluff, provides new information concerning the pile foundation under the home and discusses alternatives to the unpermitted lower seawall structure and to the proposed mid and upper bluff structures.

The applicant's letter identifies that without the existing lower seawall and mid and upper retention walls, "the bluff would recede approximately 49 feet into/or under the residence. Though the house is constructed on piles, these would be inadequate to protect the structure as previously explained. An incursion of 49 feet into the existing residence would eliminate approximately 80% of the residence." As indicated in the citation, the letter also addresses whether the existing pile system under the duplex provides any support in the event of bluff failure. The letter indicates that "there is no documentation as to how the foundation was built, . . ." (i.e., no certified, as-built plans). However, based on a review of proposed plans from 1972, the applicant's engineer has determined that "even if one were to assume for purposes of discussion that the piles were built as 'per plans' (which would constitute a poor engineering practice), the piles do not contribute to the stability of the bluff. . . The pile foundation system at 678 Neptune is much less substantial than this minimum necessary design and therefore is not adequate in and of itself to stabilize the bluff or to appropriately support the duplex in the event of another mid or upper bluff failure."

The certified LCP provides that bluff protective devices shall only be permitted when an existing principal structure is endangered and no other means of protection of the structure is possible. Because these walls are already in place, it is difficult to assess the natural geologic site conditions, such as the erosion rate of the bluff and the distance between the residence and the natural bluff edge. Without an assessment of the current geologic conditions, it is difficult to determine whether the existing residence would be in danger from erosion without the mid and upper walls. However, taken as whole, all of the above-described information submitted by the applicant indicates that the existing residence would be in danger from erosion without some form of shoreline protection on the bluff face.

Although the information indicates that shoreline protection on the bluff face is required to protect the existing residence, the submitted information does not address all feasible alternatives or demonstrate that the proposed design of the mid and upper bluff walls is the least environmentally damaging alternative. Further, the LCP requires that shoreline protection be designed to avoid significant alteration of the bluff landforms and to protect the scenic qualities of the bluff.

The Skelly Engineering letter dated November 1, 1999, contains a limited discussion of alternatives to the mid and upper bluff walls. The letter states that one alternative to the lower seawall could include a 50 to 57 foot-high seawall that would "also provide a minimum stability to the upper bluff." The letter also identifies that, "[t]he least intrusive design would feature multiple short walls stepped back and up the bluff. (a variation of this existed at the subject site at least as long ago as 1985 and still exists at the neighboring property to the immediate north at 680 Neptune)." As such, the applicant's engineer has for the first time identified two potential alternatives to the proposed 35 foot-high, 50 foot-long upper wall and 10 foot-high, 18 foot-long mid bluff wall. However, the letter does not contain further details concerning these alternatives.

With the exception of this recent Skelly Engineering letter dated November 1, 1999, the previous engineering/geotechnical reports do not address whether there are feasible alternatives to the proposed development. The recent Skelly Engineering letter has identified one possible less "intrusive" alternative to the proposed mid and upper bluff walls, i.e., the "multiple short walls", although the Commission's ability to evaluate this alternative is limited due to the lack of additional details regarding this option. It is not clear whether this option would allow for greater preservation of the bluff landform or less visually obtrusive structures. In addition, based on review of past permits for mid/upper bluff protection in the vicinity of the subject site, the Commission has approved various types of bluff protective structures. Most recently the Commission has approved mid/upper bluff protection consisting of underground piers capped by a grade beam. Such structures are not visible (although portions my become visible in the future). Therefore, these structures represent a less damaging alternative than proposed by this application (Ref. CDP No. 6-93-131/Richards, et al.).

In summary, the proposed construction of the 35 foot-high, 50 foot-long upper bluff retaining wall and 18 foot-long mid-bluff wall are inconsistent with the LCP policies which limit shoreline protective devices to those chosen after a thorough review of alternatives and when required to protect existing principal residences. In this case, the applicants have failed to provide a complete alternatives analysis, and there is evidence that less damaging alternatives that have fewer adverse impacts on the visual qualities of the bluff and the bluff land forms, may exist. Thus, the proposed project has not been designed to be the least environmentally damaging alternative. Therefore, the proposed development is not consistent with the certified LCP. Finally, since the Commission has determined that the existing mid and upper bluff retaining walls are inconsistent with the certified LCP, repairs to support these structures are also inconsistent with the certified LCP.

3. Private Stairway/Conservation of Bluff. Public Safety Element (PS) Policy 1.6 of the City's Land Use Plan (LUP) states, in part:

> The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

a. Only permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face;

[. . .]

f. . . . no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary buildings no exceeding 200 square feet in area, and similar structures shall be allowed within five feet of the bluff top edge; . . .

g. Permanently conserving the bluff face within an open space easement or other suitable instrument. . . .

The applicant asserts that a private stairway and tram were constructed on the face of the bluff prior to the enactment of the Coastal Act. The applicant has provided a copy of a County of San Diego Special Use Permit #P71-441, dated 11/24/71 which authorized the construction of a duplex, stairway and tram at the subject location. According to the applicant, the tram and stairway collapsed along with the northern section of the upper bluff retaining wall in 1995. In addition to the reconstruction of the unpermitted northern section of the upper bluff wall, the property owner at the time also constructed a new private access stairway to the beach without permits from the City or the Coastal Commission. This stairway was constructed a different location than the previously existing stairway and utilized new materials.

The applicant has applied for a coastal development permit to construct a private access stairway on the bluff face leading to the beach. Although previously part of the application submitted to the City, the applicant asserts the City effectively removed the stairway from the application when it created a separate covenant to allow the stairway to remain (see covenant, exhibit #8). The covenant signed by the City and the applicant, allows the retention of the existing stairway and allows for routine maintenance. If the stairs should become unsafe or unusable in the future, the applicant agreed to remove the stairs if it can be done without further harming the bluff. However, such a covenant is inconsistent with PS Policy 1.6 of the City's LCP. As previously described, the bluff at this location is highly unstable and, according to the applicant's engineer, the existing structures on the bluff and the duplex above are currently at risk of failure. The LCP policies cited above seek to prevent any further damage to the bluff by specifically prohibiting private stairways and other activity on the bluff face. Thus, construction of the private access stairway is clearly inconsistent with the certified LCP.

In addition to the stairs, the property also contains a patio deck that extends to the edge of the bluff and a windscreen that has been placed along the top of the unpermitted upper bluff retaining walls. This has been confirmed by both Commission staff site inspections and photographic evidence. While it is unknown as to when all the patio improvements were constructed, the "Geologic Reconnaissance" performed in 1995 identified that "a portion of the rear yard that was supported by the upper-most wall" was lost. Subsequently, the patio was reconstructed along with the reconstructed northern upper

bluff wall. Therefore, it can be reasonably assumed that portions of the rear patio were constructed without the necessary permits after January of 1995. The patio deck and windscreen have been constructed without a coastal development permit, in apparent violation of the Coastal Act.

Since the bluff at this location has been determined to be highly unstable and in a state of failure and since private stairways on the bluff face patio improvements within five feet of the edge of the blufftop are prohibited by PS policy 1.6 of the City's LCP, the Commission finds that the private access stairway is inconsistent with certified LCP and must be denied.

4. Addition to Single-Family Residence. The applicant proposes to construct a 338 sq. ft. addition to an existing approximately 4,426 sq. ft. duplex. The addition consisting of an approximately 130 sq. ft. first floor and a 208 sq. ft. second floor addition is proposed to be placed approximately 41 feet landward from the edge of the bluff. As previously discussed, the applicant's engineer has documented that the existing upper bluff retaining walls are in state of failure requiring repair.

PS Policy 1.3 of the City's LUP states the following:

> The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owners or occupants, and which may require structural measures to prevent destructive erosion or collapse.

In addition, PS Policy 1.6(f) states, in part:

> The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:
>
> [. . .]
>
> (f) Requiring new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge, and 40 feet from coastal blufftop edge with exceptions to allow a minimum coastal blufftop setback of no less than 25 feet. For all development proposed on coastal blufftops, a site-specific geotechnical report indicating that the coastal bluff setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal structure within its economic life and with other engineering evidence to justify the coastal blufftop setback shall be required. . . . no structures, including walkways, patios, patio covers, cabanas, windscreens, sundecks, lighting standards, walls, temporary buildings no exceeding 200 square feet in area, and similar structures shall be allowed within five feet of the bluff top edge; . . .

While the LCP permits additions to existing structures up to 10% of the existing structure as long as the addition is setback at least 40 feet or more from the edge of the bluff, PS

Policy 1.69(f) (as cited above) only permits new development to occur if a site-specific geotechnical report can verify that the principal structure will not be threatened by bluff erosion or retreat within its economic life. In this case, the geotechnical report submitted with the subject application identifies the existing structure as "imminently threatened":

> It is our opinion that, within the past 90 days, the distressed condition of the upper retaining wall, located on the southern half of the property, has accelerated significantly, placing the residential structure on the subject lot as well as the neighboring property (660 Neptune Avenue) in imminent threat of failure. Our opinion is based on the recent observations of the distressed portions of the lower part of the wall, where visible crushing of the vertical columns at the tieback locations and their resulting relaxation/loss of tensioning (see Figure 1 and 2), severe cracking/splitting of the two southernmost vertical columns (see Figure 3) and the recent separations of the existing upper retaining wall, brick decking and fencing (see Figure 4), and the recent vertical separation approximately 3 inches wide between the existing slope materials and the base of the upper retaining wall (See Figure 5). It is our opinion that the sudden and unexpected acceleration of the concerns affecting the site provides visible indication that the primary residential structure at 678 Neptune and at 660 Neptune Avenue are imminently threatened. (Limited Geotechnical Assessment Update by Soil Engineering Construction dated December 14, 1998.)

Therefore, the proposed 338 sq. ft. addition would be attached to an existing structure that has been documented to be imminently threatened. Because the Commission is unable to approve the after-the-fact upper bluff retention walls or their repairs, approval of the addition, although located at least 40 feet from the edge of the bluff, would be inconsistent with PS Policy 1.6 of the City's LUP in that it cannot be found that the addition will be safe from erosion and bluff failure.

5. Visual Resources. Resource Management (RM) Goal 8 of the LUP states the following:

> The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife.

In addition, RM Policy 8.5 of the LUP states, in part, that:

> The City will encourage the retention of the coastal bluffs in their natural state to minimize geologic hazards and as a scenic resource. Construction of structures for bluff protection shall only be permitted when an existing principal structure is endangered and no other means of protection of that structure is possible.

In addition, RM Policy 8.7 of the LUP states, in part, that:

> The City will establish, as primary objectives, the preservation of natural beaches and visual quality as guides to the establishment of shoreline structures. . . .

Section 30.34.020B.8 of the Implementation Program states:

> The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

Section 30.34.020.C.2.b.(4) of the IP states:

> The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded areas; and not cause a significant alteration of the natural character of the bluff face.

The proposed development will occur on the face of the bluff and be visible from the beach below and from offshore. The northern section of the wall consists of tied back concrete columns with horizontal wood lagging. The southern section of the wall consists of tied back wood/timber columns, one horizontal wood/timber waler with tie backs and horizontal wood lagging. The mid bluff wall consists of vertical and horizontal wood timbers with wood bracing. The mid and upper structures completely alter the natural appearance of the bluff face. The size and bulk of these structures significantly degrade the scenic quality of the bluffs. Similarly designed upper bluff retaining walls exist both north and south of the subject site. However, the walls to the north were constructed without a coastal development permit and, when the landowner applied for an after-the-fact permit, it was denied by the Commission. Thus, although this wall has contributed to the visual degradation of the bluffs in this area, the construction of unpermitted development should not be a basis for approval of additional structures with similar adverse impacts on visual resources.

The upper retaining wall located on the adjacent southern property was approved by the Commission through an emergency permit (ref. CDP No. 6-92-167-G/Mallen, et al.). The design of these structures is not typical of structures that have more recently been approved by the Commission. In recent approvals, the Commission has required that any permitted shoreline protective device be designed to reduce the potential adverse visual impacts through construction of below grade structures or by minimizing the height or coloring to be compatible with the surrounding natural bluffs. The proposed 35 foot-high upper bluff walls and 10 foot-high mid-bluff wall have not been designed in a manner to minimize their visual impact to the beach-going or offshore water-using public. The adverse visual appearance of the walls is further exacerbated by the attachment of the wooden stairway and windscreen attached to the upper walls and the remaining stairway that traverses the bluff face leading down to the seawall and beach below. The Commission recently (August 12, 1999) denied the applicant's request for the after-the-fact construction of the lower seawall with attached stairs finding that the seawalls and stairs represented a visual blight (ref. CDP No. 6-99-8/Lampl). In addition, at the January 2000 Commission hearing, the Commission also denied the applicant's request for reconsideration of that earlier denial.

Recently, during the hearing on the reconsideration request (6-99-8-R), the applicant proposed landscaping alone as mitigation for the lower and upper walls. However, additional alternatives that could eliminate or mitigate adverse impact to visual resources could include removal of the stairway, deck and the lowering or removal of the 35 foot-high upper bluff and 10 foot-high mid bluff walls. Since the proposed development will have significant adverse impacts on visual resources and since alternatives to the proposed development have not been adequately addressed, the proposed development is inconsistent with (RM) Goal 8, Policy 8.5 and 8.7 of the LUP and must be denied.

6. Public Access. The project site is located on the bluff face and blufftop west of Neptune Avenue. Neptune Avenue at this location is designated as the first public roadway. As the proposed development will occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

> In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

In addition, Section 30212 of the Act is applicable and states, in part:

> (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
>
> (l) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
>
> (2) adequate access exists nearby....

Additionally, Section 30220 of the Coastal Act provides:

> Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

The proposed development will occur landward of the mean high tide line (MHTL) on a privately owned bluff above the public beach. The beach fronting this location is used by local residents and visitors for a variety of recreational activities. As proposed, this development will not affect existing public access to the shoreline since no public access across the property currently exists. The “Beacons” and Grandview accessways are

located in the near vicinity and, further south, access is available at Moonlight Beach and the "Stone Steps" stairway.

Although direct public access is not affected by the proposed development, there could be indirect adverse effects. The adverse impacts of shoreline protective devices on shoreline processes, sand supply and erosion rates alter public access and recreational opportunities. Sand contribution to the beach as a result of the natural erosion of the bluff is lessened or eliminated by the placement of harden structures on the face of the bluff. The loss of sand over time contributes to a reduced beach area available for public access and recreation.

In its denial of the applicant's earlier request to construct a 37 foot-high, 67 foot-long seawall at the base of the subject bluff (CDP No. 6-99-8/Lampl), the Commission found that alternatives to the bulk and scale of the lower seawall were identified that could have less impact to sand supply, and, thereby, to public recreational use of the beach. In this case, the Commission has not been afforded an opportunity to review detailed alternatives that could lessen the adverse effect on sand supply created by the proposed retaining walls. Although the proposed development will not have a direct adverse impact on public access, the proposal will result in a lessening of sand contribution from the bluff.

7. No Waiver of Violation. The subject permit application represents an after-the-fact request to construct upper and mid bluff retaining walls (with blufftop deck and windscreen attached to the upper walls) and after-the-fact private stairway on the face of the bluff. Although this development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the City's certified LCP. Denial of the permit does not constitute a waiver of any legal action with regard to this violation of the LCP that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. Resolution of this matter will be handled under a separate enforcement action.

8. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made and the application must be denied.

In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

As shoreline erosion along the coast rarely affects just one individual property, it is imperative that a regional wide solution to the shoreline erosion problem be addressed

and solutions developed to protect the beaches. Combined with the decrease of sandy supply from coastal rivers and creeks and armoring of the coast, beaches will continue to erode without being replenished. This will, in turn, decrease the public's ability to access and recreate on the shoreline.

Based on specific policy and ordinance language requirements placed in the LCP by the Commission, the City of Encinitas is in the process of developing a comprehensive program addressing the shoreline erosion problem in the City. The intent of the plan is to look at the shoreline issues facing the City and to establish goals, policies, standards and strategies to comprehensively address the identified issues. To date, the City has conducted several public workshops and meetings on the comprehensive plan to identify issues and present draft plans for comment. However, at this time it is uncertain when the plan will come before the Commission as an LCP amendment or when it will be scheduled for local review by the Encinitas City Council.

In the case of the proposed project, site specific geotechnical evidence has been submitted indicating that the existing structure on the project site is in danger and that some form of shoreline/bluff protection is required. However, the applicant has failed to document that the proposed development is the least environmentally damaging alternative.

Based on the above findings, the proposed seawall development has been found to be inconsistent with the Sections 30.34.020(B)(2)(9) and 30.34.020(D) of the City's Certified IP which requires a thorough alternatives analysis and Public Safety Policy 1.6 of the LUP which requires preservation of the bluff and prohibits development in hazardous locations. The proposed development will have unmitigated adverse impacts on the geologic stability and visual resources of the area. Therefore, the Commission finds that approval of the proposed seawall development would prejudice the ability of the City of Encinitas to prepare a comprehensive plan addressing the City's coastline as required in the certified LCP as well as prejudice the City's ability to implement their certified LCP.

9. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been found inconsistent with the policies of the City's LCP relating to geologic stability and visual resources. Alternatives to the proposed development that would improve stability with less adverse impacts to visual resources have not been examined. Therefore, the Commission finds that the proposed project is

not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

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